



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



CALIFORNIA STATE PERSONNEL BOARD MEETING

801 Capitol Mall
Sacramento, California

Public Session Location – 801 Capitol Mall
Sacramento, California, Room 150
Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

Closed Session Location – 801 Capitol Mall
Sacramento, California, Room 141
Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

SUMMARY MINUTES – OCTOBER 10, 2006

SUMMARY MINUTES¹

OCTOBER 10, 2006

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

William Elkins, President
Sean Harrigan, Vice President
Anne Sheehan, Member
Patricia Clarey, Member

2. REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura

- A.** On September 27, 2006, the SPB received a letter from the Special Receiver's Office requesting that SPB waive the pre-employment drug testing requirement for nurses working in the state's correctional facilities. The Executive Officer issued a letter in compliance with the request subject to board ratification.
- B.** Last week, a group from a large city in China visited the State Personnel Board. The group asked numerous questions about the State's personnel system. Some interesting comparisons are that California state employees have a right to collective bargaining and a limited "right to strike," while municipal employees in China do not. Also, in China, women working for its city are required to retire when they reach the age of forty.
- C.** At the invitation of Agency Secretary Marin, Jennifer Roche from the SPB staff made a presentation to Agency directors and deputy directors regarding the CEA program.
- D.** At the October 31, 2006 meeting in San Diego, we will have a planning session on how to reform the State's hiring process.
- E.** After 34 years of state service, the current Executive Officer, Floyd Shimomura, announced his intention to retire at the end of December 2006. He expressed his extreme fortune in having a good career with the state and thanked Board members and staff for their hard work and dedication.

¹ The Minutes for the Board Meetings can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

**3. REPORT OF THE DEPARTMENT OF PERSONNEL ADMINISTRATION (DPA)
- DPA Representatives**

Division Chief Daryll Tsujihara gave a brief report on recent activities of the Department of Personnel Administration.

4. REPORT OF THE CHIEF COUNSEL – Elise Rose

Litigation:

- Plata v. California Department of Corrections and Rehabilitation – Receiver's office required waiver of pre-employment drug testing for LVN (safety) class. The Resolution is before the board today. PERB found no unfair labor practice in CDCR's implementation of the physician's testing program at U.C. San Diego pursuant to an order of the federal court. The Union of Physicians and Dentists has filed exceptions to the PERB decision.

Other:

- Attended a session put on by California AWARE on the California Public Records Act.
- Received a letter from Senator Jackie Speier's office requesting that someone from the SPB testify regarding whistleblower laws and rules at an upcoming hearing.

5. NEW BUSINESS

NONE PRESENTED

6. REPORT ON LEGISLATION – Sherry Evans

- SPB received a letter from Senate Jackie Speier requesting SPB to appear at the hearing of the Senate Select Committee on Government Cost Control on Wednesday, October 25, 2006. A member of the Legal Staff will appear.
- The Board approved a motion to submit two legislative proposals to the State and Consumer Services Agency. The proposal deals with the clean-up of the Dymally-Allatore Act and statutes relating to California Supreme Court decisions.

7. SPECIAL HEARING – California State Personnel Board Staff

The Board met with eight department representatives regarding progress and efforts made to comply with statutes pertaining to civil rights and equal employment opportunity.

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

8. ORAL ARGUMENT

In the matter of **CASE NO. 05-2596A & CASE NO. 05-2592A & 06-0016A**
Appeal from official reprimand and official reprimand and five workdays'
suspension. Physician and Surgeon, Correctional Facility. Department of
Corrections and Rehabilitation.

Persons Participating:

Roger Miller, Attorney, representing appellant.
Gregory Nicholas, Supervising Senior Staff Counsel, California Department of
Corrections and Rehabilitation, representing department.

ACTION: SUBMITTED

9. ORAL ARGUMENT

In the matter of **CASE NO. 05-4330A**. Appeal from dismissal. Custodian
Supervisor II. Department of Corrections and Rehabilitation.

Persons Participating:

Appellant, Custodian Supervisor II, Department of Corrections and Rehabilitation.
Wesley Travis, Senior Staff Counsel, Department of Corrections and
Rehabilitation, representing department.

ACTION: SUBMITTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

**10. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND
OTHER APPEALS**

Deliberations to consider matters submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

11. ORAL ARGUMENT

In the matter of **CASE NO. 05-0207PA**. Appeal from constructive medical suspension. Facility Captain. Department of Corrections and Rehabilitation.

Persons Participating:

Michael R. Skow, Senior Staff Counsel, Department of Corrections and Rehabilitation, representing department.

Wendell Llopis, Attorney, representing appellant.

ACTION: SUBMITTED

12. ORAL ARGUMENT

Oral argument in the matter of **PERSONAL SERVICES CONTRACT #06-03**. Appeal from the Executive Officer Decision Disapproving Personal Services Contract for Unarmed Security Guard Services. California Highway Patrol. Service Employees International Union, Local 1000 (CSEA).

Persons Participating:

Anne Giese, Attorney, SEIU 1000, representing department.

Neil O'Donnell, Attorney, representing appellant Inter-Con.

ACTION: SUBMITTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

13. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matters submitted at prior hearing.

[Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

14. SELECTION ANALYST CERTIFICATE PRESENTATION

- **Floyd Shimomura, California State Personnel Board**
- **Sue Williams, California State Personnel Board**

Stefanie Abdelnour

Lisa Abila

Linda Cain

Jerimiah Honer

Melanie Moreira

Gwyneth A. Raymer

Mavrey Uptegrove

Matthew Velasquez

CLOSED SESSION OF THE STATE PERSONNEL BOARD

15. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

16. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]
(See Action Taken on Pages 11–19)

17. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial.
[Government Code sections 11126(e)(1) and 18653.]

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

Patrick McCollum v. State of California
United States District Court, Northern District of California
Case No. C 04-03339 CRB

18. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

NO ACTION

19. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.
[Government Code section 18653.]

NO ACTION

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

20. **DISCUSSION OF COMING BOARD MEETING SCHEDULE OF OCTOBER 31 – NOVEMBER 1, 2006, IN SAN DIEGO, CALIFORNIA**
- NONE**

BOARD ACTIONS:

21. **ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF SEPTEMBER 5, 2006**

ACTION: ADOPTED

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

22. **EVIDENTIARY CASES**

ACTION: See Case Listings on Pages 11–21

23. **RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION - (See Minutes on Pages 28–29)**

ACTION: ADOPTED

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

24. **NON-EVIDENTIARY CASES**

ACTION: See Case Listings on Pages 21–24

25. **NON-HEARING CALENDAR**

The following proposals were made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

On October 10, 2006, the following proposals were presented to the Board by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

ACTION: ADOPTED

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

- A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.**

NONE

- B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION HAVE NO OBJECTION TO THE ABOLISHMENT OF THESE CLASSES.**

THE DEPARTMENT OF PERSONNEL ADMINISTRATION AND STATE PERSONNEL BOARD propose to abolish the following unused classifications, which have been vacant for more than twenty-four months. Departments that utilize the class as well as the appropriate union have no objection to the abolishment of these classes.

Title	Class Code
Chief of Facilities Planning	4759
Chief, Office of Prevention Services, Department of Mental Health	4626
Water Reclamation Sludge Specialist	3778
Training Coordinator, San Marcos Training Center	3119
* Printing Trades Specialist III (Process Camera)	1512
* Printing Trades Specialist I (Photocopy)	1488

** Indicates classes which are part of a class series. Only the classification listed above will be abolished.*

26. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

27. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Minutes serves to inform interested individuals and departments of proposed and approved CEA position actions.

- A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION**

CHIEF, FACILITIES OPERATIONS BRANCH

The Department of Motor Vehicles proposes to allocate the above position to the CEA category. The Chief, Facilities Operations Branch is responsible for statewide facilities planning, capital outlay, maintenance and repair, and assets management of the department's statewide programs.

CHIEF, OFFICE OF RESEARCH AND DATA ANALYSIS

The Department of Toxic Substance Control proposes to revise the existing CEA allocation titled Regional Coordinator to the above position. The Chief, Office of Research and Data Analysis will provide technical and policy consultation, advise and assistance to the Director, Executive Staff, and departmental management on a wide range of program and environmental performance measures.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

PROJECT DIRECTOR, DIVISION OF JUVENILE JUSTICE

The California Department of Corrections and Rehabilitation's request to allocate the above position to the CEA category has been approved effective September 11, 2006.

ACTION: NOTED

28. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

29. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

30. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

NONE

31. ADOPTION OF RESOLUTION WAIVING DRUG TESTING REQUIREMENT FOR APPLICANTS TO LICENSED VOCATIONAL NURSE POSITIONS WITHIN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION

Federal Receiver Robert Sillen has requested a waiver of the pre-employment drug testing requirement found in the class specification for Licensed Vocational Nurses now being considered for hire to positions within the Department of Corrections and Rehabilitation. Executive Officer Floyd Shimomura has granted the waiver, subject to ratification by the Board. Vote to adopt a resolution ratifying the action of the Executive Officer.

ACTION: NOT ADOPTED – WAIVER DENIED

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

32. ADOPTION OF RESOLUTION AMENDING QUESTION 5 OF THE STATE EMPLOYMENT AND/OR EXAMINATION APPLICATION

At a prior meeting, the Board instructed staff to prepare a resolution adopting new language for the state employment/examination application clarifying the circumstances under which prior disciplinary actions and rejections during probation need and need not be disclosed to the prospective state employer during the hiring process. Vote to adopt resolution implementing language changes.

ACTION: ADOPTED

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

33. BOARD ACTIONS ON SUBMITTED ITEMS

ACTION: See Minutes on Pages 25–27

A D J O U R N M E N T

WHAT FOLLOWS IS A RECORD OF ACTION TAKEN ON AGENDA ITEMS 22 – 24 AS NOTED.

22. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting.

On October 10, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 05-1737RPA

Appeal from dismissal

Classification: Psychiatric Technician Assistant

Department: Department of Developmental Services

Petition for Rehearing granted March 8, 2006.

Oral argument heard July 11, 2006, Sacramento.

Case ready for decision by FULL Board.

NO ACTION

(2) CASE NO. 05-1287A

CASE NO. 05-1599A

Appeal from five percent reduction in salary for six months and two work days suspension

Classification: Correctional Lieutenant and Correctional Sergeant

Department: Department of Corrections and Rehabilitation

Proposed decision rejected May 2, 2006.

Oral argument heard July 11, 2006, Sacramento.

Case ready for decision by FULL Board.

ACTION: The Board (Elkins, Sheehan, Clarey) issued a Precedential Decision finding that CDCR was authorized to serve new adverse actions on the appellants. The cases were remanded to a new ALJ for a hearing on the merits.

(3) CASE NO. 05-1351A

Appeal from dismissal

Classification: Youth Correctional Officer

Department: Department of the Youth Authority

Proposed decision rejected April 4, 2006.

Oral argument heard September 5, 2006.

Case ready for decision by FULL Board.

NO ACTION

(4) CASE NO. 04-1620PA

Appeal from dismissal

Classification: Transportation Surveyor

Department: Department of Transportation

Petition for Rehearing granted April 4, 2006.

Oral argument heard August 8, 2006, Los Angeles.

Case ready for decision by FULL Board.

NO ACTION

(5) CASE NO. 05-0078A

Appeal from dismissal

Classification: Workers' Compensation Payroll Auditor

Department: State Compensation Insurance Fund

Proposed decision rejected May 23, 2006.

Oral argument heard September 5, 2006.

Case ready for decision by FULL Board.

NO ACTION

(6) CASE NO. 04-2809PA

Appeal from dismissal

Classification: Youth Correctional Counselor

Department: Department of the Youth Authority

Petition for Rehearing granted March 8, 2006.

Oral argument heard August 8, 2006, Los Angeles.

Case ready for decision by FULL Board.

ACTION: The Board issued a non-precedential decision revoking appellant's dismissal and ordered him reinstated with back pay and benefits.

B. CASES PENDING

ORAL ARGUMENTS

These cases were on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

On October 10, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 05-2596A

CASE NO. 05-2592A & 06-0016A

Appeal from official reprimand and official reprimand and five workdays' suspension

Classification: Physician and Surgeon, Correctional Facility

Department: Department of Corrections and Rehabilitation

ACTION: SUBMITTED

(2) CASE NO. 05-4330A

Appeal from dismissal

Classification: Custodian Supervisor II

Department: Department of Corrections and Rehabilitation

ACTION: SUBMITTED

(3) CASE NO. 05-0207PA

Appeal for petition for rehearing

Classification: Facility Captain

Department: Department of Corrections and Rehabilitation

ACTION: SUBMITTED

(4) PSC NO. 06-03

Appeal from Executive Officer Decision Disapproving Personal Services Contract for Unarmed Security Guard Services

Department: Department of the California Highway Patrol

Employee Organization: Service Employees International Union, Local 1000 (CSEA)

ACTION: SUBMITTED

C. CHIEF COUNSEL RESOLUTIONS

On October 10, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 04-1952A

Appeal from dismissal

Classification: Youth Correctional Counselor

Department: Department of Corrections and Rehabilitation

Request for Order to Show Cause

ACTION: The Board issued a Resolution ordering the case to a back pay hearing before a Board ALJ.

(2) CASE NO. 06-2429

CASE NO. 06-2432

CASE NO. 06-2423

CASE NO. 06-2435

CASE NO. 06-2434

CASE NO. 06-2433

Backdating of Appointments

Classification: Staff Counsel III

Department: State Water Resources Control Board

Request to Approve Backdating of Appointments

NO ACTION

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

(3) CASE NO. 00-3394

Appeal from dismissal

Classification: Computing Consultant II

Department: San Diego State University

ACTION: The Board issued a non-precedential decision, based on a remand order from the Fourth District Court of appeal, revoking the appellant's dismissal and ordering him reinstated with back pay.

STIPULATIONS

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These were ALJ proposed decisions submitted to the Board for the first time.

On October 10, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 05-4462

Appeal from dismissal

Classification: Correctional Lieutenant

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision modifying the dismissal to an informal letter of reprimand.

(2) CASE NO. 05-0053

Appeal from dismissal

Classification: Park Maintenance Assistant

Department: Department of Parks and Recreation

ACTION: The Board rejected the ALJ's Proposed Decision.

(3) CASE NO. 06-0571

Appeal from five percent reduction in salary for twelve months

Classification: Supervising Correctional Cook

Department: Department of Corrections and Rehabilitation

ACTION: The Board rejected the ALJ's Proposed Decision and remanded the case back to the ALJ.

(4) CASE NO. 06-0709

Appeal from rejection during probationary period

Classification: Child Support Specialist I

Department: Department of Child Support Services,
Tuolumne County

ACTION: The Board adopted the ALJ's Proposed Decision revoking the rejection and granting the appeal.

(5) CASE NO. 06-0897

Appeal from rejection during probationary period

Classification: Stationary Engineer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision with a special resolution.

- (6) **CASE NO. 06-0746**
Appeal from dismissal
Classification: Material & Stores Specialist
Department: Department of Developmental Services
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the dismissal.
- (7) **CASE NO. 06-0751**
Appeal from official reprimand
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the official reprimand.
- (8) **CASE NO. 06-1330**
Appeal from letter of reprimand
Classification: Case Manager III
Department: Department of Health and Human Services, Inyo County
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (9) **CASE NO. 06-1334**
Appeal from suspension for 49 workdays
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the suspension.
- (10) **CASE NO. 06-0771**
Appeal from five percent reduction in salary for six pay periods
Classification: Academic Instructor
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision modifying the five percent reduction in salary for six pay periods to a five percent reduction in salary for three pay periods.
- (11) **CASE NO. 06-1214**
Appeal from ten percent reduction in salary for eighteen months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary.

- (12) **CASE NO. 03-3604**
Appeal from dismissal
Classification: Mobile Equipment Superintendent II
Department: Department of Water Resources
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the dismissal.
- (13) **CASE NO. 05-3501**
Appeal from constructive medical suspension
Classification: Information Technology Consultant
Department: California State Polytechnic University, Pomona
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (14) **CASE NO. 05-4507**
Appeal from official reprimand
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the official reprimand.
- (15) **CASE NO. 06-0392**
Appeal from five percent reduction in salary for 24 months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: Matter taken under submission
- (16) **CASE NO. 05-3000**
Appeal from rejection during probationary period
Classification: Office Assistant (Typing)
Department: Employment Development Department
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.

PROPOSED DECISIONS TAKEN UNDER SUBMISSION AT PRIOR MEETING

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

**(17) CASE NO. 05-2971R &
CASE NO. 05-2970R**

Appeal from dismissal and five percent reduction in salary
for twelve months

Classification: Parole Agent I

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision
revoking the dismissal and modifying the reduction in salary to an
official reprimand.

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board voted to grant or deny a petition for rehearing filed by one or
both parties, regarding a case already decided by the Board.

On October 10, 2006, the Board took the following action on the cases listed
as presented by Elise Rose, Chief Counsel, California State Personnel
Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 05-3444P

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: Petition for rehearing denied.

(2) CASE NO. 05-4412P

Appeal from dismissal

Classification: Facility Captain, Correctional Institution

Department: Department of Corrections and Rehabilitation

ACTION: Petition for rehearing denied.

(3) CASE NO. 04-2839P

Appeal from dismissal

Classification: Teacher (High School-Physical Education) (CF)

Department: Department of Corrections and Rehabilitation

ACTION: Petition for rehearing denied.

WHISTLEBLOWER NOTICE OF FINDINGS

NONE

F. PENDING BOARD REVIEW

These cases were pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

On October 10, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

(1) CASE NO. 05-2211A

Appeal from dismissal

Classification: Senior Tax Compliance Representative

Department: Employment Development Department

Proposed decision rejected September 20, 2006.

Pending transcript.

NO ACTION

(2) CASE NO. 05-2596A

CASE NO. 05-2592A & 06-0016A

Appeal from formal reprimand and formal reprimand and five workday's suspension

Classification: Physician and Surgeon, Correctional Facility

Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 6, 2006.

Oral argument originally set September 5, 2006, Sacramento.

Oral argument heard October 10, 2006, Sacramento.

ACTION: SUBMITTED

(3) CASE NO. 05-3030A

Appeal from constructive demotion

Classification: Office Technician

Department: Department of Developmental Services

Proposed decision rejected May 2, 2006.

Oral argument originally set August 8, 2006, Los Angeles.

Continued to October 31-November 1, 2006, San Diego.

NO ACTION

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- (4) **CASE NO. 05-0638A**
Appeal from dismissal
Classification: Conservationist I
Department: California Conservation Corps

Proposed decision rejected September 5, 2006.
Pending transcript.

NO ACTION
- (5) **CASE NO. 04-1789APB**
Appeal for back pay
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 21, 2006.
Pending oral argument October 31-November 1, 2006, San Diego.

NO ACTION
- (6) **CASE NO. 05-4330A**
Appeal from dismissal
Classification: Custodian Supervisor II
Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 21, 2006.
Oral argument heard October 10, 2006, Sacramento.

ACTION: SUBMITTED
- (7) **CASE NO. 05-1567A**
Appeal from dismissal
Classification: Housing Finance Specialist (General)
Department: California Housing Finance Agency

Proposed decision rejected July 11, 2006.
Oral argument originally set October 31-November 1, 2006, San Diego.
Continued to December 5-6, San Francisco.

NO ACTION
- (8) **CASE NO. 05-1875A**
Appeal from rejection during probationary period
Classification: Equipment Material Specialist
Department: Department of Transportation

Proposed decision rejected August 8, 2006.
Pending oral argument October 31-November 1, 2006, San Diego.

NO ACTION

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- (9) **CASE NO. 04-2919EPA**
Appeal of discrimination and retaliation
Classification: Physician and Surgeon
Department: Department of Corrections and Rehabilitation

Petition for rehearing granted September 20, 2006.

Pending transcript.

NO ACTION

- (10) **CASE NO. 05-0207PA**
Appeal from constructive medical suspension
Classification: Facility Captain
Department: Department of Corrections and Rehabilitation

Petition for Rehearing granted March 8, 2006.

Oral argument originally set August 8, 2006, Los Angeles.

Oral argument heard October 10, 2006, Sacramento.

ACTION: SUBMITTED

24. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases were heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board was presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION CASES NOT HEARD BY A STAFF HEARING OFFICER

On October 10, 2006, the Board adopted, as indicated below, the following items as presented by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

- (1) **CASE NO. 05-2266**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; had a negative employment record and a negative law enforcement contacts.
ACTION: DENIED

- (2) **CASE NO. 05-2289**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information, furnished inaccurate information and had a negative employment record.
ACTION: DENIED
- (3) **CASE NO. 05-2434**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; furnished inaccurate information.
ACTION: DENIED
- (4) **CASE NO. 05-1349**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Did not pass the PAT within the allotted timeframe.
ACTION: GRANTED
- (5) **CASE NO. 05-2087**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; furnished inaccurate information, had a negative driving record, negative law enforcement contacts and failure to meet legal obligations.
ACTION: DENIED
- (6) **CASE NO. 05-2092**
Classification: Tax Program Assistant
Department: Franchise Tax Board
Issue: Suitability; a felony conviction.
ACTION: DENIED
- (7) **CASE NO. 05-2371**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information, furnished inaccurate information and a negative military and arrest/conviction record.
ACTION: DENIED
- (8) **CASE NO. 05-2243**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; negative employment record.
ACTION: DENIED

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- (9) **CASE NO. 05-1295**
Classification: Medical Technical Assistant-Psychiatric
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information, furnished inaccurate information and failed to comply with legal obligations.
ACTION: DENIED
- (10) **CASE NO. 05-2299**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; a negative employment record.
ACTION: DENIED
- (11) **CASE NO. 05-2297**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; illegal drug activity.
ACTION: DENIED
- (12) **CASE NO. 05-0276**
Classification: Cadet
Department: California Highway Patrol
Issue: Suitability; omitted pertinent information.
ACTION: DENIED
- (13) **CASE NO. 05-2873**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information, furnished inaccurate information, had a negative military record and negative law enforcement contacts.
ACTION: DENIED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

- **CASE NO. 06-2008N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DISMISSED
- **CASE NO. 06-0152N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DISMISSED

October 10, 2006

- **CASE NO. 06-1162N**
Classification: Cadet
Department: California Highway Patrol
ACTION: DISMISSED
- **CASE NO. 06-0654N**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: DISMISSED

C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS

NONE

D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board was presented recommendations by Appeals Division staff for final decision on each request.

On October 10, 2006, the Board adopted, as indicated below, the following items as presented by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

- (1) CASE NO. 06-0532N**
Classification: EEO Investigator
Department: Department of Social Services
Issue: The charging party requests to file charges against employees of the Department of Social Services
ACTION: DENIED

PETITIONS FOR REHEARING CASES

NONE

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

NO ACTION

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

NO ACTION

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

NO ACTION

6. HEARING – Public Hearing Regarding State Employment Application (STD. 678 (Rev/ 12/2001))

Should the Instructions section of the state employment application, pursuant to Richard Toby (2001) SPB Dec. No. 01-04, clarify whether employees who have been rejected during their probationary period be required to answer "Yes" to Question No. 5 of the employment application? (Hearing held July 11, 2006.)

ACTION: ADOPTED

7. CASE NO. 05-1737RPA

Appeal from dismissal. Psychiatric Technician Assistant. Department of Developmental Services. (Oral argument held July 11, 2006.)

NO ACTION

**8. CASE NO. 05-1287A &
CASE NO. 05-1599A**

Appeal from five percent reduction in salary for six months and two work days suspension. Correctional Lieutenant and Correctional Sergeant. Department of Corrections and Rehabilitation. (Oral argument held July 11, 2006.)

ACTION: The Board (Elkins, Sheehan, Clarey) issued a Precedential Decision finding that CDCR was authorized to serve new adverse actions on the appellants. The cases were remanded to a new ALJ for a hearing on the merits.

9. CASE NO. 04-1620PA

Appeal from dismissal. Transportation Surveyor. Department of Transportation. (Oral argument held August 8, 2006.)

NO ACTION

10. CASE NO. 04-2809PA

Appeal from dismissal. Youth Correctional Officer. Department of the Youth Authority. (Oral argument held August 8, 2006.)

ACTION: The Board issued a non-precedential decision revoking appellant's dismissal and ordered him reinstated with back pay and benefits.

11. CASE NO. 00-3446

Appeal to set aside resignation. Police Officer. California State University, Fresno. (Oral argument held September 5, 2006.)

NO ACTION

12. CASE NO. 05-1351A

Appeal from dismissal. Youth Correctional Officer. Department of Corrections and Rehabilitation. (Oral argument held September 5, 2006.)

NO ACTION

13. CASE NO. 05-0078A

Appeal from dismissal. Workers' Compensation Payroll Auditor. State Compensation Insurance Fund. (Oral argument held September 5, 2006.)

NO ACTION

**14. CASE NO. 05-2596A
CASE NO. 05-2592A & 06-0016A**

Appeal from official reprimand and official reprimand and five workdays' suspension. Physician and Surgeon. Correctional Facility. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

15. CASE NO. 05-4330A

Appeal from dismissal. Custodian Supervisor II. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

16. CASE NO. 05-0207PA

Appeal for petition for rehearing. Facility Captain. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

17. PSC NO. 06-03

Appeal from Executive Officer Decision Disapproving Personal Services Contract for Unarmed Security Guard Services. Department of the California Highway Patrol. Service Employees International Union, Local 1000 (CSEA). (Oral argument held October 10, 2006.)

NO ACTION

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

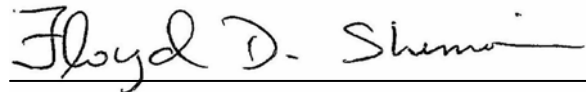
WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting held on October 10, 2006.

VOTE: Elkins, Harrigan, Sheehan, Clarey – Aye

A handwritten signature in black ink, reading "Floyd D. Shimomura", written over a horizontal line.

Floyd Shimomura
Executive Officer
California State Personnel Board